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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,525	01/22/2004	Erik David Florio	ERIK001	9214
<div>7590 12/10/2007</div> <div>Erik David Florio 444 Whispering Pines Drive, # 179 Scotts Valley, CA 95066</div>				
			<div>EXAMINER</div> <div>CARLOS, ALVIN LEABRES</div>	
			<div>ART UNIT</div> <div>3714</div>	<div>PAPER NUMBER</div>
			<div>MAIL DATE</div> <div>12/10/2007</div>	<div>DELIVERY MODE</div> <div>PAPER</div>

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/763,525

Applicant(s)

FLORIO, ERIK DAVID

Examiner

Alvin L. Carlos

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 October 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

1. The following is a Final Office action in response to communications received October 17, 2007. Claims 1, 8, 10, 19, 25 have been amended and claims 1-29 are now pending.

Response to Amendments

2. Applicant's amendments to the Specification are sufficient to overcome the objection to the specification set forth in the previous office action.

3. Applicant's amendments to the Drawing are sufficient to overcome the objection to the drawing set forth in the previous office action.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-4, 6-7, 9, 11-12, 14-18 stand rejected under 35 U.S.C. 102 (e) as being anticipated by Holland.

Re claim 1, Holland teaches a method for providing interactive training application to a user (column 1 lines 25-28), comprising of creating a database of information on plurality of trainers (column 5 lines 12-16), selecting a trainer from the

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plurality of trainers (column 12 lines 26-30), plurality of exercise routines that provides a result (column 7 lines 46-47), choosing a result to be achieved (column 5 lines 19-21), creating a sequence of exercise routines by selected trainer (column 5 lines 14-15) and presenting on an output device the sequence of exercise routines to user using the selected trainer (column 4 lines 45-51).

Re claim 2, Holland teaches choosing a result to be achieved further including the step of selecting an area of interest (column 1 lines 44-47).

Re claim 3, Holland teaches presenting a plurality of skill levels for each result and choosing a skill level (column 3 lines 40-46).

Re claim 4, Holland teaches selecting an area of interest further includes presenting a plurality of area of interest for each skill level under each result and choosing an area of interest (column 1 lines 56-64).

Re claim 6, Holland teaches the information on trainers further comprising information on each trainers from the group consisting of trainer's biography, trainer's credentials and trainer's area of specialization (column 18 lines 35-54).

Re claim 7, Holland teaches choosing a result including choosing from the group consisting of Toning & Firming, Strength & Size, Cardio, result representing physical results obtained by user from exercise routines (column 1 lines 56-64).

Re claim 9, Holland teaches choosing an area of interest including choosing from the group consisting of whole body, legs, back, chest, abdomen, arms, area of interest representing the muscle groups of the body of user that can be exercised (column 1 lines 49-55).

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Re claim 11, Holland teaches presenting a plurality of navigational links and providing means to user to choose from navigational links enabling user to navigate through the application (column 6 lines 15-33).

Re claim 12, Holland teaches choosing navigational links including choosing from a group consisting of alternate-exercise, track-your-progress, back, home, Popular question, music (column 6 lines 34-44).

Re claim 14, Holland teaches choosing track-your-progress link further including the step of presenting a tracking log to user for update, updating tracking log with input from user and reporting on progress made by user on exercise routine (column 8 lines 20-27).

Re claim 15, Holland teaches updating log with information from user from the group consisting of user's weight lifted, number of repetitions performed by user on each of exercise routines, progress with chosen trainer, progress with exercise routine (column 9 lines 1-17).

Re claim 16, Holland teaches choosing the popular questions link further comprising presenting a plurality of popular questions and answers to popular questions related to gym equipment and exercise routines (columns 14 lines 15-33).

Re claim 17, Holland teaches choosing music link further including providing access to a audio player interface, and allowing user to play music on interface during user's performance of exercise routine (column 4 lines 40-44).

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Re claim 18, Holland teaches an introduction and a short tutorial on how to use personal training application, introduction and tutorial to familiarize user with personal training application (column 5 lines 26-29).

6. Claims 19-29 stand rejected under 35 U.S.C. 102(b) as being anticipated by Hinnebusch US Pub 20020055419.

Re claim 19, Hinnebusch teaches an interactive training application system for a user (paragraphs 0009-0010), comprising a database of information on a plurality of trainers and a plurality of exercise routines that provide a result (paragraphs 0022 and 0122), a user interface to receive user's response when user selects a trainer from plurality of trainers and a result to be achieved (paragraph 0011 lines 1-6), a user interface to display plurality of trainers (paragraph 0122 lines 1-5), plurality of results to be achieved and upon selection of trainer and results to be achieved (paragraphs 0022, 0024, 0139 and 0184), sequence of exercise routines to achieve results are presented by selected trainer on an output device (paragraph 0270 lines 1-11).

Re claim 20, Hinnebusch teaches a system including any one from a group consisting of a desktop computer, personal computer, a workstation, a notebook computer, a handheld personal digital assistant, a cellular phone, a DVR and an interactive pager (paragraph 0018 lines 1-8).

Re claim 21, Hinnebusch teaches a user interface to receive input from user is an input device connected to system, input device is from a group consisting of keyboard, keypad, a number pad from a cell phone, remote control (paragraph 0057 lines 1-5), output device to display is an output device connected to system, output

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device is from a group consisting of computer monitor, video monitor, TV screen, video screens, touch screen and Liquid Crystal Display screens (paragraphs 0048-0049).

Re claim 22, Hinnebusch teaches a database is on a storage device, storage device capable of interacting with computer/computing device (paragraph 0022 lines 16-18).

Re claim 23, Hinnebusch teaches storage device is a compact disc (paragraphs 0265 and 0266).

Re claim 24, Hinnebusch teaches storage device is a flash memory module (paragraph 0199 lines 1-4).

Re claim 25, Hinnebusch teaches an interactive training application system for a user over a communications network (paragraphs 0028-0029), comprising a server hosting a database comprising information on a plurality of trainers and plurality of exercise routines providing a result (paragraph 0018 lines 1-3), a user interface to receive user's response when user selects a trainer from plurality of trainers (paragraph 0122 lines 1-5) and a result to be achieved (paragraph 0011 lines 1-6), a user interface to display plurality of trainers (paragraph 0139 lines 1-3), plurality of results to be achieved and upon selection of trainer and results to be achieved (paragraphs 0022, 0024 and 0184), sequence of exercise routines to achieve results are presented by selected trainer on an output device (paragraph 0270 lines 1-11).

Re claim 26, Hinnebusch teaches communications network is the Internet (paragraphs 0049 and 0067).

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Re claim 27, Hinnebusch teaches a system to access server remotely over communications network (paragraphs 0028-0029), access is by a wired connection (paragraphs 0247 and 0260), system including any one from a group consisting of a desktop computer, personal computer, a workstation, a notebook computer, a handheld personal digital assistant, a cellular phone, a DVR and an interactive pager (paragraph 0018 lines 1-8).

Re claim 28, Hinnebusch teaches a system to access server remotely over communications network (paragraphs 0028-0029), access is by a wireless connection (paragraph 0262 lines 1-3), system including any one from a group consisting of a desktop computer, personal computer, a workstation, a notebook computer, a handheld personal digital assistant, a cellular phone, a DVR and an interactive pager (paragraph 0018 lines 1-8).

Re claim 29, Hinnebusch teaches user interface to receive user's response is an input device connected to system, input device is any one from a group consisting of keyboard, keypad, a number pad from a cell phone, remote control (paragraph 0057 lines 1-5), output device to display is any from a group consisting of computer monitor, video monitor, TV screen, video screens, touch screens and Liquid Crystal Display screens connected to system (paragraphs 0048-0049).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 5 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Holland 6607483 in view of Davis US Pub 20050039127. Holland teaches the claim limitations as discussed above. However, Holland fails to teach the following claimed limitation taught by Davis: a plurality of area of interest includes graphically displaying the human anatomy and choosing an area of interest from the human anatomy display (paragraphs 0006 and 0007). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Holland's invention in order to provide an interactive training application that graphically displaying the human anatomy and choosing an area of interest from the anatomy display through variety of network configurations or a variety of media as taught by Davis (paragraphs 0040-0043).

9. Claims 8, 10, 13 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Holland 6607483 in view of Hinnebusch US Pub 20020055419.

Re claim 8, Holland teaches the invention as discussed above.

However, Holland fails to teach the following limitations as taught by Hinnebusch: presenting on an output device sequence of exercise routine further includes presenting the usage of gym equipment (paragraph 0263 lines 1-15).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Holland's invention in view of Hinnebusch in order to provide a

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method for creating a personalized exercise routine with user interface used in connection with forming machine-readable instructions protected as private to a user subsequently carrying out the exercise routine on an exercise machine (paragraph 0009 lines 1-6).

Re claim 10, Holland teaches the invention as discussed above.

However, Holland fails to teach the following limitations as taught by Hinnebusch: presenting the usage of gym equipment further including describing the function of each of the gym equipment (paragraph 0030 lines 1-5), describing the operation of each of the gym equipment (paragraph 0263 lines 8-13), and describing the logical order of training on each of the gym equipment, presentation is by selected trainer to user (paragraph 0017 lines 1-15).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Holland's invention in view of Hinnebusch in order to provide a method for creating a personalized exercise routine with user interface used in connection with forming machine-readable instructions protected as private to a user subsequently carrying out the exercise routine on an exercise machine (paragraph 0009 lines 1-6).

Re claim 13, Holland teaches the invention as discussed above.

However, Holland fails to teach the following limitations as taught by Hinnebusch: presenting an alternate gym equipment to exercise same area of interest as original gym equipment when original gym equipment is unavailable (paragraphs 0148-0149), presenting a different exercise routine on same gym equipment, presentation providing

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alternate exercise routine to exercise specific area of interest for user (paragraph 0023 and 0024).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Holland's invention in view of Hinnebusch in order to provide a method for creating a personalized exercise routine with user interface used in connection with forming machine-readable instructions protected as private to a user subsequently carrying out the exercise routine on an exercise machine (paragraph 0009 lines 1-6).

Response to Arguments

10. Applicant's arguments filed October 17, 2007 have been fully considered but they are not persuasive.

Regarding claim 1, Applicant's argue that Holland does not teach the claimed limitations. However, the Examiner disagrees and clarifies the arguments as discussed above. In addition, Holland teaches "creating a sequence of exercise routines to achieve result (column 5 line14) and presenting on an output device sequence of exercise routines to user using selected trainer (column 5 line 16-18)". Furthermore, the amendments of claim 1 do not overcome the rejection of record. Therefore, the rejection of claim 1 under 35 U.S.C. 102 (e) as being anticipated by Holland stands.

Regarding claims 2-4, 6-7, 9 and 11-12, Applicant's argue that Holland does not teach the claimed limitations. However, the Examiner disagrees and clarifies the arguments as discussed above. Therefore, the rejection of claims 2-4, 6-7, 9 and 11-12 under 35 U.S.C. 102 (e) as being anticipated by Holland stands.

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Regarding claim 19, Applicant's argue that Hinnebusch does not teach the claimed limitations. However, the Examiner disagrees and clarifies the arguments as discussed above. In addition, Hinnebusch teaches "upon selection of trainer (paragraph 0122 lines 1-5) and results to be achieved (paragraph 0135 and 0136), a sequence of exercise routines to achieve results are presented by selected trainer on an output device (paragraphs 0017 and 0219)". Therefore, the rejection of claim 19 under 35 U.S.C. 102 (b) as being anticipated by Hinnebusch stands.

Regarding claim 25, Applicant's argue that Hinnebusch does not teach the claimed limitations. However, the Examiner disagrees and clarifies the arguments as discussed above. In addition, Hinnebusch teaches a user interface to display plurality of trainers (paragraph 0122 lines 1-5), and results to be achieved and upon selection of trainer and results to be achieved (paragraphs 0141 and 0142), a sequence of exercise routines to achieve results are presented user-by selected trainer on all output device (paragraph 0270 lines 1-11). Therefore, the rejection of claim 19 under 35 U.S.C. 102 (b) as being anticipated by Hinnebusch stands.

Regarding claims 20-24 and 26-29, Applicant's argue that Hinnebusch does not teach the claimed limitations. However, the Examiner disagrees and clarifies the arguments as discussed above. Therefore, the rejection of claims 20-24 and 26-29 under 35 U.S.C. 102 (b) as being anticipated by Hinnebusch stands.

Regarding claim 5, Applicant's argue that Holland in view of Davis does not teach the claimed limitations. However, the Examiner disagrees and clarifies the arguments

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as discussed above. Therefore, the rejection of claim 5 under 35 U.S.C. 103(a) as being unpatentable over Holland in view of Davis stands.

Regarding claims 8, 10 and 13, Applicant's argue that Holland in view of Hinnebusch does not teach the claimed limitations. However, the Examiner disagrees and clarifies the arguments as discussed above. Therefore, the rejection of claims 8, 10 and 13 under 35 U.S.C. 103(a) as being unpatentable over Holland in view of Hinnebusch stands.

11. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "presenting on an output device sequence of exercise routines", a user interface to display plurality of trainers and results to be achieved and upon selection of trainer and results to be achieved, a sequence of exercise routines to achieve results are presented user-by selected trainer on an output device") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

12. In response to applicant's argument that Holland in view of Davis does not teach the claimed limitations, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references

would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

13. Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

14. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Conclusion

15. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

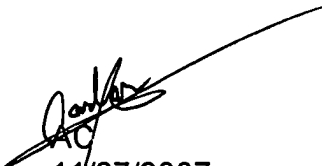
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alvin L. Carlos whose telephone number is 571-2703077. The examiner can normally be reached on 7:30am-5:00pm EST Mon-Fri (alternate Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on (571) 272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



11/27/2007



XUAN M. THAI
SUPERVISORY PATENT EXAMINER